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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,215	02/20/2004	John David Vogel	8266-1222	6683

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EXAMINER

LUBY, MATTHEW D

ART UNIT PAPER NUMBER

3611

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/783,215	Applicant(s) VOGEL ET AL.	
	Examiner Matt Luby	Art Unit 3611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-79 is/are pending in the application.
- 4a) Of the above claim(s) 51-65 and 71-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-50 and 66-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/27/04 &amp; 9/02/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group III (claims 38-79) in the reply filed on 3/31/05 is acknowledged.

Newly submitted claims 51-65 and 71-79 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The claims of Group 51-53 are directed to a patient support having an external power input for providing a charge input for a battery for a motor.

The claims of Group 54-65 are directed to a patient support having first and second handles that receive separate force inputs from a user and a controller to process these separate signals.

The claims of Group 71-78 are directed to at least one elastic force sensing element for sensing a force from a user of a patient support.

The claim of Group 79 is directed to a patient support having a drive controller that is configured not to drive the motor in the absence of the enable signal.

These claims are all separately patentable species that are different from the group that the Applicant elected.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 51-6 and 71-79 are withdrawn from

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consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Objections***

Claim 67 is objected to because of the following informalities: the claim sentence does not end with a period. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-40, 43-45, 48-50, 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al. (U.S. Patent 6,772,850) in view of (U.S. Patent 5,959,538) Shousek.

Waters et al. disclose a bedframe, a plurality of casters 24, a wheel 34, a wheel lifter - shown lifting the wheel 34 in Figures 7 and 8, a motor 44 connected to the wheel. Waters et al. do not disclose a load cell/resistor connected to the motor and a handle or a button to receive a command from the user and a battery 160, 162. Shousek disclose that it is well known to have a load cell/resistor 10 connected to the handle of a motor-driven vehicle Figure 2 and col. 1, lines 10-35 and a button 5 to receive a command from the user in order to provide a signal having a signal strength proportional to the

force input col. 1, lines 11-13. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a load cell connected to the motor, on the Waters et al. device, as taught by Shousek, in order to provide a signal having a signal strength proportional to the force input.

Claims 41, 42, 46, 47 and 68-70 are rejected under 35 U.S.C. 103(a) as being obvious over Waters et al. in view of Shousek, as applied to claims 38, 39, 44 and 66 above, and further in view of Heimbrock et al. (U.S. Patent 6,330,926).

The modified Waters et al. device disclose all of Applicant's claimed invention except that there are multiple handles that are spaced apart, supported for pivotal movement and configured to fold towards each other. Heimbrock et al. disclose a device with multiple handles that are spaced apart 80 and 82, supported for pivotal movement and configured to fold towards each other (col. 5, line 61-col. 6, line 4) in order to provide a user maximum access to a patient (paragraph bridging col. 5-col. 6). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide multiple handles that are spaced apart, supported for pivotal movement and configured to fold towards each other on the modified Waters et al. device, as taught by Shousek, in order to provide a user maximum access to a patient.

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is

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thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (571) 272-6648. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6612. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Matt Luby  
Examiner  
Art Unit 3611

M.I.  
June 1, 2005